



## Office of the Attorney General

State of Texas

November 16, 1998

DAN MORALES

ATTORNEY GENERAL

Mr. Michael Wied  
Attorney  
Texas Water Development Board  
P.O. Box 13231  
Austin, Texas 78711-3231

OR98-2697

Dear Mr. Wied:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119541.

The Texas Water Development Board (the "board") received a request for its file on a particular water improvement district. You contend that the requested documents are excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

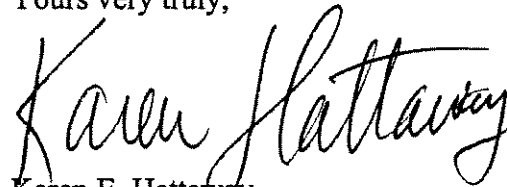
Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Litigation cannot be regarded as reasonably anticipated unless we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

You contend that the board reasonably anticipates litigation concerning a loan it made pursuant to the Agricultural Water Conservation Loan Program. Under the circumstances presented, we believe that the board reasonably anticipates litigation. See Water Code §17.900(b). Having reviewed the documents at issue, we agree that they relate to the reasonably anticipated litigation. Therefore, the board may withhold these documents from disclosure pursuant to section 552.103(a).

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from disclosure pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/mjc

Ref: ID# 119541

Enclosures: Submitted documents

cc: Mr. Timothy Brown  
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(w/o enclosures)

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<sup>1</sup>Because we are able to resolve this matter under section 552.103, we do not address your section 552.107 claim.